

## **902 KAR 18:031. Participant abuse.**

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802.

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the sanction schedule for participant abuse of the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Participant Abuse of the Program. (1) The state WIC agency or a local agency shall issue a written warning for the following suspected acts for which a complaint is received concerning a participant:

- (a) Purchasing unauthorized foods;
- (b) Redeeming WIC benefits at an unauthorized store;
- (c) Making a verbal offer to sell or exchange supplemental food or WIC food instruments with another individual, group, or vendor; or
- (d) Returning supplemental foods to a vendor for cash.

(2) The state WIC agency or a local agency shall take the following specified action for an intentional act of abuse by a participant:

- (a) Redeeming a food instrument before the first day to use or after the last date of use:
  - 1. First offense: written warning;
  - 2. Second offense: monthly pickup of food instruments; or
  - 3. Third or subsequent offense:
    - a. One (1) month suspension; and
    - b. Reinstatement of two (2) or three (3) month issuance shall be at the discretion of the certifying professional authority;
- (b) Redeeming a food instrument that has previously been reported to the local agency as being lost or stolen and which has been replaced:
  - 1. First offense: written warning; or
  - 2. Second and subsequent offenses: claim issued to recoup the WIC benefits that have been redeemed;
- (c) Purchasing unauthorized food:
  - 1. First offense: written warning; or
  - 2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (d) Redeeming WIC benefits at an unauthorized store:
  - 1. First offense: written warning; or
  - 2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (e) Verbal abuse or threatening physical abuse of clinic or vendor staff:
  - 1. First offense: written warning; or
  - 2. Second and all subsequent offenses: one (1) month suspension from the WIC program;
- (f) Physical abuse of clinic or vendor staff, first and all subsequent offenses; three (3) month suspension from the WIC Program;
- (g) Exchanging or selling supplemental food or a WIC food instrument with another individual, group, or vendor, first and all subsequent offenses; three (3) month suspension from the WIC Program;
- (h) Exchanging supplemental food or a WIC food instrument for credit, nonfood items, or

supplemental food in excess of WIC benefits prescribed, first and all subsequent offenses: three (3) month suspension from the WIC Program;

(i) Posting possible WIC issued foods, benefits, or food instruments for sale in print, online, or allowing another person to do so:

1. First offense: written warning; or
2. Second offense: Three (3) month suspension;

(j) Dual participation in more than one (1) WIC program or participation in both the WIC program and the Commodities Supplemental Food Program:

1. First offense: written warning and immediate termination from one (1) of the WIC programs. The continuing WIC agency shall be chosen based upon the participant's residence or services; or

2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim to recoup WIC benefits previously redeemed;

(k) Knowingly and deliberately making a false or misleading statement or misrepresenting, concealing, or withholding a fact in order to obtain program benefits:

1. First offense: three (3) month disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or

2. Second and all subsequent offenses: one (1) year disqualification from the WIC program and a claim issued to recoup the WIC benefits redeemed; or

(l) Selling supplemental foods in print or online by posting WIC foods, WIC benefits, or food instruments for sale or allowing another person to do so:

1. First offense: written warning; or
2. Second and all subsequent offenses: Three (3) month suspension from the WIC program.

(3) Mandatory disqualification. Except as provided in subsections (4) and (5) of this section, a participant shall be disqualified from the WIC program for one (1) year if the state WIC or local WIC agency assesses:

- (a) A claim of \$100 or more; or
- (b) A second or subsequent claim of any dollar amount.

(4) A mandatory disqualification shall not be imposed if, within thirty (30) days of receipt of the claim letter demanding repayment:

- (a) Full restitution is made;
- (b) A repayment schedule is agreed on; or

(c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(5) A participant may reapply to participate in the WIC program before the end of a mandatory disqualification period if one (1) of the following conditions has been met:

- (a) Full restitution is made;
- (b) A repayment schedule is agreed upon; or

(c) The state WIC or local WIC agency approves the designation of a proxy if the participant is an infant, child, or under age eighteen (18).

(6) The amount of a claim shall be determined by the value of the WIC benefits redeemed. If the claim is not paid, the participant shall be denied application to the WIC program for the number of months of benefits which were used to calculate the claim amount.

(7) A participant with a pattern of abuse of the WIC program shall be referred to the Office of the Inspector General for prosecution under KRS 194A.505.

(8) Activities prohibited by KRS 194A.505 apply to participants, vendors, and agency personnel. Penalties in KRS 194A.990 apply to participants, vendors, and agency personnel who have violated KRS 194A.505. (40 Ky.R. 497; 829; eff. 10-16-2013.)